

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

PETER A. SPALLUTO
and ACCESS WITH SUCCESS, INC.
Plaintiffs

Vs.

HDP, INC.,
Defendant

CIVIL ACTION NO.:
05-CV-10385-EFH

**MOTION OF DEFENDANT, HDP, INC., FOR AN ORDER
COMPELLING THE PLAINTIFFS, PETER A. SPALLUTO
AND ACCESS WITH SUCCESS, INC., TO APPEAR FOR A DEPOSITION**

The defendant, HDP, Inc., hereby moves that an Order issue from this Court compelling each of the plaintiffs herein, Peter A. Spalluto and Access with Success, Inc., to appear for their depositions at the office of the defendant's counsel, Brian McMenimen, of Adler, Pollock & Sheehan, P.C., 175 Federal Street, Boston, Massachusetts. As grounds for its motion, in addition to the accompanying memorandum of law, the defendant states:

1. The defendant previously noticed the plaintiffs' depositions for November 6, 2006 at 10:00 a.m. and 12:00 p.m., respectively, to take place at Adler, Pollock & Sheehan, P.C., 175 Federal Street, Boston, Massachusetts. Notices of Deposition were properly served upon the plaintiffs' attorney, Nicholas S. Guerrero, Esq., Shaheen, Guerrero & O'Leary, LLC, Jefferson Office Park, 820A Turnpike Street, North Andover, MA 01845. Copies of the Notices of Deposition are attached hereto as Exhibit A.

2. Plaintiffs' counsel telephoned defendant's counsel's office on Friday, November 3, 2006, to inform him that plaintiffs will not be attending the depositions scheduled for Monday, November 6, 2006. Counsel's explanation was that Mr. Spalluto resided Florida and did not

intend to return to Massachusetts at this time because he is wheelchair bound and prone to health problems in cold weather.

3. Access with Success, Inc. is identified in the plaintiff's complaint as being a Massachusetts corporation.

4. Plaintiff Spalluto has been represented to the Court by his counsel as "a frequent visitor to Boston". [See (1) (a), 2d paragraph, of the Plaintiff's pre-trial memorandum.]

5. The plaintiffs brought their action against the defendant in the District of Massachusetts.

6. Defendant has made efforts to depose the plaintiffs in the past, but those efforts were unsuccessful because Mr. Spalluto was not in Massachusetts at any time when the defendant's undersigned counsel was available to conduct his deposition.

7. The defendant offered to postpone the depositions for one week, until November 13, 2006, in order to permit the plaintiffs to seek protective orders from the court regarding the taking of the depositions; however the plaintiffs have not sought a protective order regarding their depositions.

For all of the above reasons, the defendant moves that this Court issue an Order compelling the plaintiffs to appear for their depositions on February 16, 2007, or at an earlier time mutually agreeable to plaintiffs' counsel and defendant's counsel, at the offices of Adler, Pollock & Sheehan, P.C., 175 Federal Street, Boston, Massachusetts.

REQUEST FOR ORAL ARGUMENT

Defendant HDP, Inc., requests oral argument on this motion, in the event the Court deems it would be helpful to hear from counsel.

Respectfully submitted,
HDP, INC.
By its Attorney,

/s/ Brian J. McMenimen

Brian J. McMenimen
BBO # 338840
Adler Pollock & Sheehan P.C.
175 Federal Street
Boston, Massachusetts 02110
(617) 482-0600
bmcmenimen@apslaw.com
Dated: December 20, 2006

CERTIFICATE OF COUNSEL

I, Brian McMenimen, attorney for the defendant, HDP, Inc., certify that counsel for the plaintiffs and counsel for the defendant have conferred and have attempted in good faith to resolve or narrow the scope of the issue presented in this motion.

/s/ Brian J. McMenimen

Brian J. McMenimen

CERTIFICATE OF SERVICE

I hereby certify that this document filed through ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing on December 20, 2006.

/s/ Brian J. McMenimen

Brian J. McMenimen

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EXHIBIT A

PETER A. SPALLUTO and)
ACCESS WITH SUCCESS, INC.)
Plaintiff,)

CIVIL ACTION NO.: 05-cv-10385EFH

v.)

HDP, INC.,)
Defendant.)

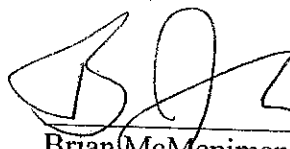
NOTICE OF TAKING 30(b)(6) DEPOSITION

To: Nicholas S. Guerrero
Shaheen, Guerrero & O'Leary, LLC
Jefferson Office Park
820A Turnpike Street
North Andover, MA 01845

Please take notice that at 10:00 a.m. on Monday, November 6, 2006 at the offices of Adler Pollock & Sheehan, P.C., 175 Federal Street, Boston, Massachusetts, the defendant in this action, by its attorney will take the deposition upon oral examination of Access With Success, Inc. pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, before Mahaney Reporting Services, Notary Public in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oaths. The defendants requests that Access With Success, Inc. designate one or more officers, directors, managing agents, or other persons who consent to being designated to testify pursuant to Fed. R. Civ. P. 30(b)(6) on the matters described in Schedule A.

You are invited to attend and cross-examine.

Respectfully submitted,
DEFENDANTS
HDP, INC.
By its attorney,


Brian McMenimen, BBO # 338840
ADLER POLLOCK & SHEEHAN, P.C.
175 Federal Street
Boston, MA 02110
(617) 482-0600 Telephone
(617) 482-0604 Facsimile

Dated: October 24, 2006
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CERTIFICATE OF SERVICE
I hereby certify that a true copy of the
above document was served upon the
attorney of record for each other party
by mail on October 24, 2006

Schedule A

1. Every matter and assertion alleged in the plaintiffs' complaint, including the factual basis for the assertion appearing in paragraph 24 that HDP, Inc. has made renovations to the premises since January 26, 1992.
2. The identity of persons who have personal knowledge of the matters alleged in the complaint.
3. the activities of the plaintiff with respect to other claims made or actions commenced by it under the Americans with Disabilities Act.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PETER A. SPALLUTO and)
ACCESS WITH SUCCESS, INC.)
Plaintiff,)

CIVIL ACTION NO.: 05-cv-10385EFH

v.)

HDP, INC.,)
Defendant.)

NOTICE OF TAKING DEPOSITION

To: Nicholas S. Guerrero
Shaheen, Guerrero & O'Leary, LLC
Jefferson Office Park
820A Turnpike Street
North Andover, MA 01845

Please take notice that at 12:00 p.m. on Monday, November 6, 2006 at the offices of Adler Pollock & Sheehan, P.C., 175 Federal Street, Boston, Massachusetts, the defendant in this action, by its attorney will take the deposition upon oral examination of Peter Spalluto pursuant to the Federal Rules of Civil Procedure, before Mahaney Reporting Services, Notary Public in and for the Commonwealth of Massachusetts, or before some other officer authorized by law to administer oaths.

You are invited to attend and cross-examine.

Respectfully submitted,
DEFENDANTS
HDP, INC.
By its attorney,



Brian McMenimen, BBO # 338840
ADLER POLLOCK & SHEEHAN, P.C.
175 Federal Street
Boston, MA 02110
(617) 482-0600 Telephone
(617) 482-0604 Facsimile

Dated: October 24, 2006

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CERTIFICATE OF SERVICE
I hereby certify that a true copy of the
above document was served upon the
attorney of record for each other party
by mail and on 